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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,723	11/25/2003	Michael P. Corcoran	C516.12-0005	5761
164 7590 07/08/2008 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002				
EXAMINER TRUONG, KEVIN THAO				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
07/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,723

Applicant(s)

CORCORAN ET AL.

Examiner

Kevin T. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/24/2008 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Tanner et al. (U.S. 6,635,066) and further in view of Corcoran et al. (U.S. 6,635,066).

3. As to claims 1, 2, 6-14, 37, 38, and 41-48, Maahs discloses the claimed invention in figures 6-8 and 11, an occlusion device (70) comprises a plurality of ribs (72) extending from the proximal end of the center post (62) to the distal end of the center post (62); and a foam sheet (82) attached to the plurality of ribs (72,75). Note that Maahs described in figures 6, 7, and 16, the frame of filter (70) having a greater diameter at its proximal end than its distal end. As a result, it would have been an

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obvious matter of design choice to make a diameter of ribs (72) near the proximal end of the center post (62) greater than a diameter of the ribs (72) near the distal end of the center post. Since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

4. Claims 3, 4, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Tanner et al. (U.S. 6,635,066). Maahs discloses the claimed invention, as state above except for the center post comprises a first segment including a pin and second segment including a lumen for engaging the pin of the first segment. Tanner et al teaches in figure 2A, that it is known in the surgical art to have center post (10) comprises a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Maahs center post by substituting for the center post having a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment as taught by Tanner et al. in order to permits expansion of the vessel necks and/or ends without negatively impacting the connection between the graft and the vessel wall.

5. Claims 5, 15-17, 20-27, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Corcoran et al. (U.S. 6,635,066). Maahs discloses the claimed invention, as state above except for the center post comprises a plurality of holes through which the ribs attach. Corcoran et al

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teaches in figures 2 and 15, that it is known in the surgical art to have the center post comprises a plurality of holes through which the ribs passing through the holes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Maahs center post with holes located at its ends to which the ribs can be passed through as taught by Corcoran so that it is less likely to be sheared off or permanently linked since the edges of the hole are beveled or rounded.

6. Claims 18, 19, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Corcoran et al. (U.S. 6,635,066) and further in view of Tanner et al. (U.S. 6,635,066).

Maahs discloses the claimed invention, as state above except for the center post comprises a plurality of holes through which the ribs attach and the center post comprises a first segment including a pin and second segment including a lumen for engaging the pin of the first segment. Corcoran et al teaches in figures 2 and 15, that it is known in the surgical art to have the center post comprises a plurality of holes through which the ribs passing through the holes. Tanner et al teaches in figure 2A, that it is known in the surgical art to have center post (10) comprises a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Maahs center post with holes located at its ends to which the ribs can be passed through as taught by Corcoran so that it is less likely to be sheared off or permanently linked since the edges of the hole are beveled or rounded and furthermore, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify the Maahs center post by substituting for the center post having a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment as taught by Tanner et al. in order to permits expansion of the vessel necks and/or ends without negatively impacting the connection between the graft and the vessel wall.

Response to Arguments

7. Applicant's arguments filed 03/04/2008 have been fully considered but they are not persuasive. In response to applicant's argument that Maahs discloses a blood filter device for used in blood vessel to capture embolic material and not preferably shaped for sealing a left atrial appendage (LAA) to prevent blood from entering or exiting the left atrial appendage as described in the present invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

8. In response to applicant's argument that the Maahs device having a different structure and shape that the device of the present invention, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

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9. In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/
Primary Examiner, Art Unit 3734

Kevin T. Truong
Primary Examiner
Art Unit 3734

